

**Before the  
Commission on Common Ownership Communities  
Montgomery County, Maryland**

In the Matter of:

**Greencastle Lakes Community Association**

Complainant,

v.

**Sarah Chan and Kwan James Yau**

Respondents

Case No. 64-06

August 30, 2007

**DECISION AND ORDER**

The above-entitled case came before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and arguments on July 19, 2007, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code. The hearing panel has considered the testimony and evidence presented, and finds, determines, and orders as follows:

**Background**

Greencastle Lakes Community Association (Complainant) filed a complaint with the Commission on Common Ownership Communities on September 7, 2006. Complainant alleged:

1. The residential unit owned by Sarah Chan and Kwan James Yau (Respondents) and located at 11 Childress Court, Burtonsville, Maryland, is under the authority of Complainant to “require any person to take any action, or not take any action, involving a unit.”
2. Respondents’ deck railing is not in compliance with architectural requirements.
3. Respondent is responsible for correcting the architectural violation.

The staff of the Commission on Common Ownership Communities sent a copy of the complaint to Respondents on September 20, 2006, to which they did not respond within the 30 days required by law (COMCOR Section 10B.06.01.03(b)). The staff sent a reminder to Respondents on December 12, 2006, to which Respondents replied on January 18, 2007, alleging that they had applied for and received approval for the deck railings. Complainant disputed this and requested a hearing. The Commission accepted jurisdiction of the dispute on June 6, 2007, and set it for a hearing on July 19, 2007.

Complainant’s original complaint alleged several violations, but before the hearing Complainant stated that Respondents had corrected all of those violations except for the railing

on the deck on the rear of Respondents' unit. Complainant stated that Respondents' deck railing balusters do not conform to architectural requirements because they are horizontal and spaced more than four inches apart. The dispute therefore went forward only on the issue of the deck railing, with Complainant alleging that the deck railing violated the community rules, and that it also violated the County's building code because the balusters were spaced more than 4 inches apart.

Respondents were notified, both by regular U.S. Mail and by Certified Mail, of this hearing, but they did not appear. Therefore, they did not provide any testimony refuting Complainant's testimony and evidence.

At the hearing, Complainant's Property Manager testified that Respondents had not submitted the necessary application for the deck. Complainant's Property Manager further testified that he notified Respondents of the violation by letter in November 2004, May 2005, August 2005, and September 2005. Respondents did not respond to any of these letters. Complainant's Property Manager stated that he inspected Respondents' unit on July 10, 2007, and that the deck was still in violation. Complainant's Property Manager was not aware if Respondents' unit had a deck that was not in violation before the current violation was observed.

A member of Complainant's Board of Directors testified that he inspected Respondents unit the morning of July 19, 2007, and that the deck was still in violation.

Complainant provided photographs of Respondents' deck and Respondents' neighbors' decks to demonstrate that Respondents' deck was not in harmony with the community because of the railing design. Complainant also provided evidence to demonstrate that Respondents' deck appeared to be in violation of required setback from neighbors' property lines, and asserted that the neighbors had to approve the deck location..

### **Findings of Fact**

The Respondents were properly served with the Summons and Statement of Charges in this matter and the Commission has jurisdiction over them.

The Complainant is a homeowners association whose governing documents are filed in the land records of Montgomery County, Maryland at Liber 6695, Folios 680-715, April 2, 1985.

The Respondents are the owners of 11 Childress Court, Burtonsville, Maryland. This property is subject to the governing documents of the Greencastle Lakes Community Association.

Pursuant to its governing documents, the Complainant adopted house rules entitled "Architectural and Environmental Review Committee Standards and Guidelines" on September 1, 1987, which have been amended since that time (the current version is dated May 1, 2004).

Although the Respondents applied for permission to construct a stairway from the deck, they did not submit any information regarding the design of the deck railing. As constructed, the

railing does not conform to the Complainant's architectural standards because those standards require vertical balusters closely spaced together, and the Respondents' railing is composed of three widely-spaced boards. In addition, the Respondents did not apply and obtain permission to construct such a railing. Respondents' railing is noticeably different from those on the decks adjacent to Respondents' unit.

There was no evidence to show that the Complainant acted arbitrarily, or other than in good faith in this matter.

## **Conclusions of Law**

### **Architectural Violation**

The standard of our review of a community's decision to deny an architectural change was set out in Kirkley v. Seipelt, 212 Md. 127 (1956). In that case, the Court of Appeals held that "any refusal to approve the external design or location [by the association] would have to be based upon a reason that bears some relation to the other buildings or the general plan of development; and this refusal would have to be a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner," and so long as the decision meets that standard, it must be upheld. 212 Md. at 133.

The Panel concludes that Respondents are in violation of Article VII of Complainant's Declaration regarding architectural restrictions. According to Article VII, Section 1 of Complainant's Declaration, "Architectural and Environmental Review Committee," unit owners shall not make "exterior addition to or change ... or other alteration thereupon ... until the complete plans and specifications showing the location, nature, shape, height, material, color, type of construction and any other proposed form of change ... shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by an Architectural and Environmental Review Committee." Respondents never submitted plans and specifications for the deck. Moreover, the visual evidence provided clearly shows that Respondents' deck railing is not in harmony with the community because the balusters are horizontal, while the neighbors' deck balusters are vertical. Therefore, the Panel concludes that Respondents are responsible for correcting the architectural violation associated with the deck railing. Since the deck's setback was not raised in Complainant's original complaint, and was not raised until the hearing itself, the Panel determined not to make any conclusions related to setback..

## **Order**

Based on the evidence of record and the reasons stated above, it is ordered that:

1. Within thirty (30) days of the date of this Order, Respondents shall submit an architectural change request for their proposed changes to the deck railing in proper form to the Complainant, and shall comply with the Complainant's ruling thereon.

2. Within thirty (30) days of the date of the Complainant's decision on the deck railing application, Respondents shall correct the architectural violation by altering the railing to meet community requirements as stated in the response to their application or by removing the entire deck completely. If Respondents fail to meet the requirement of this order, Complainant may pursue any remedies available to it, including (to the extent permitted by Complainant's governing documents) correcting the architectural violation in the least expensive manner that is agreed to by both parties and placing a lien on Complainants' property subject to reimbursement for the associated costs and attorney's fees.

Commissioners Robert Gramzinski and Andrew Oxendine concurred in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, under the Maryland Rules of Procedure.

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Douglas Shontz, Panel Chair  
Commission on Common Ownership Communities